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5 BEFORE THE INSURANCE COMMISSIONER
6 OF THE STATE OF WASHINGTON

7 OIC Docket No. G02-45

8 In the Matter of the Application regarding the
9 Conversion and Acquisition of Control of
10 Premera Blue Cross and its Affiliates

11
12 WSMA'S REPLY TO PREMERA'S
13 PROCEDURAL RESPONSE TO WSMA'S
14 REQUEST FOR AN EMERGENCY
15 HEARING

16 I. BACKGROUND

17 Premera's response motion invokes several arguments for why it is resisting disclosure of
18 AEO ("Attorneys' Eyes Only") information to the Washington State Medical Association's
19 ("WSMA") experts.

20 These arguments are diversions. The real reason for Premera's opposition is captured in
21 its accusation that the WSMA is "attempting to make a blatant end-run around the prohibition
22 against disclosing sensitive data to those who could thereby benefit economically." Premera's
23 Procedural Response to WSMA's Request for an Emergency Hearing, p. 1.

This grave accusation is made without a scintilla of evidence to support it. Both of the
WSMA's experts hold positions of great stature and responsibility; neither would imperil their

1 reputation, nor risk facing the sanctions that Premera assiduously negotiated for improper
2 disclosure.

3 Premera offers only a fleeting few sentences about why the WSMA actually seeks to use
4 Dr. Collins and Mr. Perna as experts: to conserve resources by using the Association's
5 considerable in-house talent. The WSMA aspires to be the "well-financed" organization that
6 Premera proclaims it to be. Id. at p.2. Given the importance of this issue to the WSMA, it is
7 willing to provide financial and other documentation to the Special Master, on an *in-camera*
8 basis, to demonstrate that its determination to represent the interests of patients and physicians in
9 this process has exceeded its legal budget and created a strain on its resources, forcing it to be
10 highly selective about how and when it can participate.

11 12 II. ARGUMENT

13 a. Premera has No Need to Depose the WSMA's Experts, or Receive Document Production 14 from Them, Prior to the Disclosure of AEO Information.

15 Premera claims that "Until WSMA produces the requested documents and until Premera
16 has an opportunity to depose WSMA's President and chief economist, Premera cannot fully
17 respond to the substance of WSMA's motion." Id. at 1 – 2.

18 Yet Premera did not demand to depose the other Interveners' experts, nor compel them to
19 turn over documents, prior to allowing them to view material designated as AEO.

20 The only rationale for using a different approach with the WSMA must be that its experts
21 are somehow inherently untrustworthy as a result of their relationship with the Association.

22 It is telling that none of Premera's voluminous document production demands relates to
23 the trustworthiness of the experts.

1 Instead, Premera makes a transparent attempt to

- 2 1. Harass experts who might question Premera's conduct. Example: Asking Dr. Collins to
3 "produce all documents . . . from January 1, 1999 to the present . . .[showing] all income
4 that his physicians [*sic*] group reported to the IRS [.]” Premera's Second Set of
5 Document Requests to the Washington State Medical Association, Request for
6 Production No. 8.
- 7 2. Obtain attorney-client privileged information. Example: “produce . . . all correspondence,
8 emails, documents or other communication to and from Jeff Coopersmith or anyone at
9 Coopersmith Health Law Group, on the one hand, and Mr. Perna, on the other hand,
10 regarding the Conversion Application [.]” Id., Request for Production No. 11.
- 11 3. Make onerous demands for information that is not remotely related to the conversion
12 proposal. Example: “produce all documents . . . from January 1, 1999 to the present . . .
13 [showing] all American Medical Association representatives that [Dr. Collins] had
14 contact with and all correspondence, emails, documents or other communications he had
15 with those representatives [.]” Id., Request for Production No. 8.¹
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17 The other production requests generally relate to the experts' qualifications and their
18 potential bias.

19 The WSMA will gladly furnish the Special Master with more information regarding the
20 credentials of its experts if he deems it necessary.

21 ¹ Premera apparently concedes that it carries the burden of proof, no doubt to buttress its argument that it deserves
22 the very aggressive discovery it seeks. Premera's Procedural Response, pp. 2 – 4. For the reasons set forth above,
23 the discovery bears no relation to the real basis for Premera's objection to AEO disclosure. As stated in its initial
request for an emergency hearing, the WSMA believes it should prevail regardless of which party is found to bear
the burden of proof.

1 In brief, Dr. Jeff Collins has been an internist in Spokane for nearly twenty years. He sees
2 approximately 5,000 patients each year, with conditions ranging from earaches to terminal
3 illnesses. He has been a member of Eastern Washington's largest internal medicine practice since
4 its inception.

5 Dr. Collins has served as President of the Spokane County Medical Society and has held
6 prominent positions at both area hospitals. He has been a leader on the board of the Washington
7 State Medical Association for several years, culminating in his current tenure as President. In his
8 board roles, Dr. Collins has visited physician practices across all specialties and across all areas
9 of the state.

10 These responsibilities, along with his clinical practice, have given Dr. Collins extensive
11 knowledge of the health care delivery system in this state. He is eminently qualified to address
12 the needs of patients and the physicians who take care of them.

13 Robert Perna has served as the WSMA's Director of Health Care Economics for over ten
14 years. He is a recognized authority in the state on medical practice economics, working on a
15 regular basis with Washington physicians and office managers to improve the economic health
16 of their practices, and with the health care economics departments at the University of
17 Washington and Washington State University.

18 In addition, Mr. Perna is the author of numerous publications, including studies of the
19 individual market, Blue Cross conversion proposals, and future trends in health care. For several
20 years he was a board member of the Washington chapter of what is now the American
21 Association of Healthcare Administrative Management.

1 The other ground on which Premera rests its position is bias. The WSMA anticipates that
2 Premera will attempt to cast doubt on the credibility of the Association's experts by pointing out
3 that Mr. Perna is a paid staff member of the organization, that Dr. Collins is an elected member
4 of the organization, and so forth. Premera will have ample opportunity to raise these arguments
5 in their response to the experts' reports, in subsequent depositions, and at the adjudicative
6 hearing. What Premera should not be given is the ability to effectively muzzle the WSMA's
7 experts by exploring those areas *now*, during the time allotted for the experts to prepare their
8 reports.

9 b. An Emergency Resolution of this Dispute will Protect the WSMA's Rights as an Intervener.

10 Premera would like us to believe, without further explanation, that "There is neither
11 justification nor need for an emergency hearing." Premera's Procedural Response, p.1

12 The hearing schedule that Premera urges the Special Master to adopt has oral argument
13 occur on November 10, the very day that the expert reports are due to be submitted.

14 Given that Premera has labeled virtually everything of use in the consultants' reports as
15 "AEO", the WSMA experts would be left with very little to evaluate.

16 In fact, time is of the essence: the reports run to hundreds of pages replete with complex
17 analysis of a transaction whose scope and scale is unprecedented in this state. The original
18 schedule of less than thirty days was already too ambitious for a full review.

19 Granting an emergency hearing in this matter is consistent with the purpose behind the
20 appointment of a Special Master: "to promote prompt decisionmaking [*sic*] by having an arbiter
21 readily available to resolve any disputes." Seventh Order: Appointment of a Special Master,
22 Paragraph 8 (2), p. 3.

1 Extending the deadline for the filing of the WSMA's expert reports to November 17 is
2 now needed given the amount of time consumed by addressing Premera's objections to AEO
3 disclosure. The WSMA notes that Premera has previously dropped objections to the extension of
4 this deadline for all Interveners. See Commissioner's Fifteenth Order, fn. 1.

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6 III. CONCLUSION

7 Preventing the WSMA's experts from evaluating the AEO material immediately would
8 deprive them of information essential to the preparation of their reports, and would deprive the
9 public of a much-needed perspective on a major public health issue, contrary to Commissioner
10 Kreidler's repeated commitment to giving the Interveners a full and fair opportunity to
11 participate in the review of Premera's attempt to become a for-profit corporation.

12 In addition to the relief sought in its motion dated October 26, 2003, the WSMA hereby
13 asks the Special Master to strike Premera's document production requests of the Association's
14 experts.

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16 Respectfully submitted this 28th day of October 2003.

17 COOPERSMITH HEALTH LAW GROUP, P.S.

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19 By _____
20 Jeff Coopersmith, WSBA #20913
21 Attorney for Intervener
22 Washington State Medical Association
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